

**Appendix E – EPA Pesticide General Permit Reasonable and Prudent Alternatives,
Reasonable and Prudent Measures, Terms and Conditions, and
Conservation Recommendations**

jurisdiction.

As a result of that failure and based on our review of the best scientific and commercial data available, it is NMFS' Biological Opinion that discharges of pesticide pollutants that would be authorized by the Pesticides General Permit are likely to jeopardize the continued existence of California coastal Chinook salmon, Central Valley spring-run Chinook salmon, Lower Columbia River Chinook salmon, Upper Columbia River spring-run Chinook salmon, Puget Sound Chinook salmon, Sacramento River winter-run Chinook salmon, Snake River fall-run Chinook salmon, Snake River spring/summer-run Chinook salmon, Upper Willamette River Chinook salmon, Columbia River chum salmon, Hood Canal summer-run chum salmon, Central California Coast coho salmon, Lower Columbia River coho salmon, Southern Oregon and Northern California Coast coho salmon, Oregon Coast coho salmon, Pacific eulachon, Southern green sturgeon, Shortnose sturgeon, Lake Ozette sockeye salmon, Snake River sockeye salmon, Central California Coast steelhead, California Central Valley steelhead, Lower Columbia River steelhead, Middle Columbia River steelhead, Northern California steelhead, Puget Sound steelhead, Snake River steelhead, South-Central California Coast steelhead, Southern California coast steelhead, Upper Columbia river steelhead, Upper Willamette River steelhead, Killer whale (southern resident) and Beluga whale (Cook Inlet).

After reviewing the current status of the critical habitat that has been designated for endangered and threatened species, the environmental baseline of the action area, the potential direct and indirect effects of the action, an examination of the controls EPA proposes to implement to mitigate these effects, and cumulative effects, it is our Biological Opinion that EPA has not insured that the activities it proposes to authorize under its proposed PGP are not likely to destroy or adversely modify designated critical habitat. As a result of that failure and based on our review of the best scientific and commercial data available, it is NMFS' Biological Opinion that discharges of pesticide pollutants that would be authorized by the Pesticides General Permit are, likely to result in the destruction or adverse modification of designated critical habitat for California coastal Chinook salmon, Central Valley spring-run Chinook salmon, Lower Columbia River Chinook salmon, Upper Columbia River spring-run Chinook salmon, Puget Sound Chinook salmon, Sacramento River winter-run Chinook salmon, Snake River fall-run Chinook salmon, Snake River spring/summer-run Chinook salmon, Upper Willamette River Chinook salmon, Columbia River chum salmon, Hood Canal summer-run chum salmon, Central California Coast coho salmon, Lower Columbia River coho salmon, Southern Oregon and Northern California Coast coho salmon, Oregon Coast coho salmon, Southern green sturgeon, Lake Ozette sockeye salmon, Snake River sockeye salmon, Central California Coast steelhead, California Central Valley steelhead, Lower Columbia River steelhead, Middle Columbia River steelhead, Northern California steelhead, Snake River steelhead, South-Central California Coast steelhead, Southern California coast steelhead, Upper Columbia river steelhead and Upper Willamette River steelhead, Cook Inlet beluga whale and killer whale (southern resident).

Reasonable and Prudent Alternative

This Opinion has concluded that EPA's issuance of the PGP is likely to jeopardize the continued existence of 33 endangered or threatened species under NMFS' jurisdiction and result in the destruction or adverse modification of critical habitat that has been designated for 29 of those species. The clause "jeopardize the continued existence of" means "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of ESA listed species in the wild by reducing the reproduction, numbers

or distribution of that species (50 CFR §402.02).

NMFS reached this conclusion because as the general permit is currently structured, the EPA would not be likely to know where or when most of the activities it intends to authorize would occur; if these activities were resulting in exposures of endangered or threatened species under NMFS' jurisdiction to pesticide pollutants in concentrations, durations or frequencies that would cause adverse effects to those species or designated critical habitat and would thus not be in a position to take measures to avoid those adverse effects; or whether the permittees were complying with the conditions of the permit designed to protect endangered and threatened species and designated critical habitat under NMFS' jurisdiction from being exposed.

Because we have concluded that the proposed general permit fails to comply with the requirements of section 7(a)(2) of the ESA, we have provided a Reasonable and Prudent Alternative (RPA) that would allow EPA to comply with those requirements. Regulations implementing Section 7 of the Act (50 CFR 402.02) define RPAs as alternative actions, identified during formal consultation, that: (1) Can be implemented in a manner consistent with the intended purpose of the action; (2) Can be implemented consistent with the scope of the action agency's legal authority and jurisdiction; (3) Are economically and technologically feasible for the action agency to implement; and (4) Would, in NMFS' opinion, avoid the likelihood of jeopardizing the continued existence of endangered or threatened species or resulting in the destruction or adverse modification of critical habitat. Because the general permit, for purposes of endangered or threatened species under NMFS' jurisdiction, authorizes discharges in the District of Columbia, Idaho, Massachusetts and New Hampshire, all Indian lands and Federal lands in Delaware, Vermont and Washington State, the RPA described below applies only in those locations. In addition, this RPA is not applicable to discharges to waters of the United States on Federal lands for which an existing consultation covers those activities.

The RPA is comprised of two required elements which must be implemented in their entirety to insure that the actions authorized by the general permit are not likely to jeopardize endangered or threatened species under the jurisdiction of NMFS or destroy or adversely modify critical habitat that has been designated for any of these species.

Because this Biological Opinion has concluded that the EPA's proposed PGP is likely to jeopardize the continued existence of endangered and threatened species under the jurisdiction of NMFS and is likely to result in the destruction or adverse modification of designated critical habitat, the EPA is required to notify the NMFS Office of Protected Resources of its final decision on implementation of the reasonable and prudent alternatives.

The Reasonable and Prudent Alternative is as follows:

RPA Element 1

For discharges to waters of the US where endangered or threatened species and designated critical habitat under NMFS' jurisdiction occur, the EPA will, with the technical assistance of NMFS, identify the discharges that are eligible to proceed under the general permit with or without additional conditions on the discharge, or not eligible for coverage under the general permit.

Planned Discharges

For discharges not made in response to a Declared Pest Emergency Situation, any decision maker that plans to discharge pesticide pollutants into waters of the United States containing endangered or threatened species and

designated critical habitat under NMFS' jurisdiction must file a Notice of Intent (NOI) to discharge at least 30 days prior to any discharge. The NOI must describe:

1. The location of the pest management area in detail, or a detailed map of the location;
2. The pest(s) to be controlled;
3. The pesticide product(s) to be discharged and method of application;
4. The planned quantity and rate of discharge(s) for each method of application;
5. The number of planned discharges;
6. The approximate date(s) of planned discharge(s); and
7. The rationale for supporting a determination that the discharge is not likely to adversely affect listed species, including situations in which the pest to be controlled presents a greater threat to endangered or threatened species under NMFS' jurisdiction than any exposure to the pesticide pollutant(s) planned to be used, including appropriate measures to be taken to avoid or eliminate the likelihood of adverse effects.

The EPA will promptly post a complete and accurate NOI on the Internet and will provide NMFS with a copy of the NOI on the same day. Discharges are not authorized prior to 30 days after the posting of the NOI on the Internet. Within 30 days after receipt of such an NOI, NMFS will provide EPA with a determination as to whether the eligibility criteria of "not likely to adversely affect listed species or designated critical habitat" including those situations in which the pest being controlled poses a greater threat to the species and the critical habitat than would the exposure to that pesticide pollutant(s), has been met, could be met with conditions that NMFS identifies, or has not been met. NMFS expects that the EPA will rely on NMFS' determinations when determining whether to allow permit coverage, whether to require additional conditions or whether to withhold authorization under the general permit.

After EPA has concluded that the planned discharge or discharges, as planned or with additional conditions, are eligible for coverage under the general permit, any decision maker who plans to make any changes to the discharges must file a new NOI at least 30 days prior to making any change in the planned discharges. The new NOI will be processed in the same fashion as the earlier NOI.

Discharges made in Response to a Declared Pesticide Emergency Situation

Any decision maker may begin application of pesticides immediately to waters of the United States containing endangered or threatened species under NMFS' jurisdiction in response to a Declared Pest Emergency Situation, as declared by a Federal or State agency, or a designee authorized to make such a declaration. Such discharges are authorized for an initial 60 days. The decision maker must file an NOI no later than 15 days after beginning discharge. The NOI must describe:

1. The location of the pest management area in detail, or a detailed map of the location;
2. The pest(s) to be controlled;
3. The pesticide product(s) to be discharged and method of application;
4. The planned quantity and rate of discharge(s) for each method of application;
5. The number of planned discharges;

6. The approximate date(s) of planned discharge(s); and
7. The rationale for supporting a determination that the discharge is not likely to adversely affect listed species, including situations in which the pest to be controlled presents a greater threat to endangered or threatened species under NMFS' jurisdiction than any exposure to the pesticide pollutant(s) planned to be used, including appropriate measures to be taken to avoid or eliminate the likelihood of adverse effects.

An NOI filed 15 days after beginning discharges to address a Declared Pest Emergency Situation must also include equivalent information contained in items 1 through 6 for those discharges that have already occurred.

The EPA will promptly post the NOI on the Internet and will provide NMFS with a copy of the NOI on the same day it posts the NOI on the Internet. Within 30 days of receipt of the NOI filed in response to a Declared Pest Emergency Situation, NMFS will advise EPA whether the past and planned future discharges meet the eligibility criteria of "not likely to adversely affect listed species or designated critical habitat," including those situations in which the pest being controlled poses a greater threat to NMFS' species and critical habitat than would the exposure to that pesticide pollutant(s), has been met, could be met with conditions that NMFS identifies, or has not been met.

The EPA will advise the decision maker within 15 days after NMFS' notification whether the discharge or discharges are no longer covered by the general permit or whether additional conditions are required to make the discharge or discharges qualify for coverage beyond the 60 day authorization general permit. If the EPA identifies additional conditions or prohibitions to qualify discharges as eligible for coverage beyond 60 days under the general permit, those conditions or prohibitions remain in effect for the life of the general permit. NMFS expects that the EPA will rely on NMFS' determinations when determining whether to allow permit coverage, whether to require additional conditions or whether to withhold authorization under the general permit. After the EPA has concluded that the planned discharge or discharges, as planned or with additional conditions, are eligible for coverage under the general permit, any decision maker who plans to make any changes to the discharges must file a new NOI at least 30 days prior to making any change in the planned discharges. The new NOI will be processed in the same fashion as an NOI filed for Planned Discharges.

Provision of Information to NMFS

To facilitate NMFS' review of NOIs, within 60 days from the date of issuance of the permit the EPA shall provide a summary of the current registered application rates, the expected environmental concentrations (EECs) of pesticides in water resulting from those applications and the toxicity information used to assess the risk to endangered and threatened species as presented in the EPA's most recent FIFRA risk assessment documents for all pesticide uses to be authorized under the general permit. For NMFS' reference, the EPA shall also provide to NMFS the original risk assessment documents from which these summaries were derived.

Annual Reporting

Any decision maker that plans to discharge pesticide pollutants into waters of the United States containing endangered or threatened species under NMFS' jurisdiction must also file an annual report containing:

1. A description of treatment area, including location and size;
2. The approximate date of any discharge;
3. Identification of any waters of the United States to which pesticide pollutants are discharged;

4. The pesticide use pattern resulting in any discharge (i.e., mosquito and other flying insect pest control, aquatic weed and algae control, aquatic nuisance animal control, or forest canopy pest control);
5. Any target pest;
6. Contact information for the decision maker or any pesticide applicator, if different from the decision maker;
7. The total amount of each pesticide product applied for the reporting year by application method;
8. If applicable, an annual report of any adverse incidents as a result of any discharge; and
9. If applicable, a description of any corrective action. The EPA must collect and summarize these reports and provide this summary to NMFS.

Rationale

Under the proposed general permit, only those decision makers who meet the eligibility requirements to submit an NOI would be required to notify the EPA if their discharge would expose any endangered or threatened species under NMFS' jurisdiction to a pesticide pollutant. According to EPA estimates, only a small fraction of the total number of operators that would discharge within the range of endangered or threatened species under NMFS' jurisdiction would be required to file such a notification. In addition, it is unlikely that those few decision makers that would be required to file these notifications would possess the ability or resources to make such determinations accurately. For these reasons, the EPA would not know if the majority of discharges it plans to authorize would expose endangered or threatened species under NMFS' jurisdiction to the direct or indirect effects of the activities to be authorized by the proposed general permit. Because of this, the EPA cannot reliably estimate the probable individual or cumulative effects of those activities to those species or to their designated critical habitat.

This RPA element addresses these insufficiencies by requiring all operators that intend to discharge into waters of the United States containing endangered or threatened species or designated critical habitat under NMFS' jurisdiction to file an NOI at least 30 days prior to beginning discharge or, in the case of a Declared Pest Emergency Situation, no later than 15 days after beginning to discharge. In the NOI, the operator must identify where and when such discharges would occur, what those discharges would be and of which use patterns these discharges would consist. NMFS will have the opportunity to review every discharge that might result in exposure to endangered and threatened species or designated critical habitat under NMFS jurisdiction. NMFS will then determine whether the planned discharge or discharge(s) (future discharge or discharges in the case of Declared Pest Emergency Situations) meets the general permit's eligibility criteria of not likely to adversely affect NMFS Listed Resources of Concern, would meet it with additional conditions or would not meet the eligibility criteria. The NOI process is designed to ensure that no individual discharge or combination of discharges is likely to adversely affect listed species or designated critical habitat, with the limited exception of discharges in response to a Declared Pest Emergency Situation, described below. Although operators will make the initial determination that their discharges are not likely to adversely affect listed species, EPA will rely on NMFS' determination and not that of the individual operator. EPA must make the final determination as to whether any particular discharge qualifies for coverage under the general permit. However, NMFS and EPA expect that EPA will rely on NMFS' determination in making the decision regarding coverage under the general permit.

While the general permit does authorize discharges to address Declared Pest Emergency Situations prior to review of discharges by NMFS, this authorization has significant limits. Only a responsible government entity can make a declaration of a Declared Pest Emergency Situation. NMFS expects such declarations will be rare.

Once NMFS has reviewed a past or ongoing discharge pursuant to the NOI process for declared pest emergencies and provided its determination to EPA on whether the discharge(s) meet or could have met the eligibility criteria, any conditions or prohibitions applied by EPA remain in effect for the life of the permit for that discharger. This element of the RPA is designed to prevent repeated declarations of pest emergencies by the same operator, with a recurring 60 day of discharge authorization under the general permit without any conditions or prohibitions in place.

Because of the insufficiencies identified in this Biological Opinion regarding the FIFRA risk assessment process to evaluate effects to endangered and threatened species and designated critical habitat under NMFS' jurisdiction, NMFS will consider other evidence when reviewing NIOs. NMFS has issued four Biological Opinions on the authorization of the use of 24 pesticides under FIFRA. NMFS determined that the use of some of those pesticides was likely to jeopardize endangered or threatened species, or destroy or adversely modify designated critical habitat, under NMFS' jurisdiction. NMFS will consider this information when evaluating whether any discharges authorized by the PGP would be likely to have any adverse effects on listed resources.

By implementing this RPA element, the EPA would know or be able to reliably estimate whether or to what degree ESA listed species and designated critical habitat under NMFS' jurisdiction would be likely to be exposed to the direct or indirect effects of the activities to be authorized by the general permit and would be able to put measures in place to avoid or eliminate any likely adversely affect to listed species or designated critical habitat. This RPA element also allows the EPA to reliably estimate the probable individual or cumulative effects to endangered and threatened species and designated critical habitat under NMFS' jurisdiction by requiring that all decision makers that discharge into waters of the United States within the range of ESA listed species under NMFS' jurisdiction file an annual report that includes information on the total amount of each pesticide product applied, any adverse incidents that occurred as a result of any such discharges and a description of any corrective action that was undertaken. This gives the EPA the ability to make corrective actions or to implement preventive or corrective measures based on this information received on those probable individual or cumulative effects. This also allows the EPA to know whether reinitiation of formal consultation is required as provided in 50 CFR 402.16.

By preventing direct adverse effects to endangered or threatened salmonid fish species under NMFS' jurisdiction, unless the pest being controlled poses a greater threat to the survival of those species than would the exposure to that pesticide pollutant, this element of the RPA would prevent the salmonid fish prey base of southern resident killer whales and Cook Inlet beluga whales from becoming appreciably diminished by the activities authorized by the issuance of the proposed general permit.

RPA Element 2

In addition to the current monitoring requirements in the general permit, the EPA will also solicit and collect information and water quality monitoring and other data from Federal agencies, States and other entities on water quality to help determine the presence of pesticides, degradates, metabolites, etc. in habitats where endangered or threatened species, or designated critical habitat occur to insure that the pesticide pollutant discharges it authorizes under the general permit do not exceed any EPA recommended Water Quality Criterion or occur in concentrations that are likely to result in adverse effects to endangered or threatened species or to designated critical habitat under NMFS' jurisdiction.

The EPA will encourage States, Federal agencies, and other entities to collect this information. The Agency will compile and analyze this information and data and will meet with NMFS annually during the permit term to present and discuss the results and identify data gaps and possible approaches to address the gaps.

Rationale

The majority of operators who are eligible for coverage under the proposed general permit would not monitor water quality and would thus have no way of knowing whether a discharge has exceeded a Water Quality Criterion or resulted in a pesticide pollutant in the water in a toxic amount. As a result, the proposed general permit is not currently structured such that the EPA can continually identify, collect and analyze information that would indicate whether authorized discharges of pesticide pollutants on, over or near waters of the United States may expose endangered or threatened species or designated critical habitat under NMFS' jurisdiction to pesticide pollutants at concentrations, durations or frequencies that are known or suspected to produce physical, physiological, behavioral or ecological responses that have potential individual or cumulative adverse consequences for individual organisms or constituent elements of critical habitat.

In addition, there is a greater level of non-compliance and lower rate of enforcement actions with general permits. There is also a low rate of inspections for minor dischargers, such as those to be authorized by the proposed PGP. Because of the lack of water quality monitoring requirements in the proposed general permit, the EPA is not likely to know or be able to determine reliably whether or to what degree operators are complying with the conditions, restrictions or mitigation measures the proposed general permit requires when they discharge pesticide pollutants on, over or near waters of the United States.

To address these insufficiencies, this element of the RPA requires that the EPA collect data to monitor for any exceedance of any EPA recommended Water Quality Criterion for the pesticide being applied or for any pesticide pollutant occurring in excess of levels known not to have adverse effects to endangered or threatened species or designated critical habitat under NMFS' jurisdiction, to identify gaps in water quality data, and to develop approaches to address those gaps. By monitoring for such concentrations in representative habitats where and when endangered or threatened species, or designated critical habitat under NMFS' jurisdiction may be exposed to these discharges, the EPA will be able to know or reliably determine whether or to what degree operators are complying with the conditions, restrictions or mitigation measures required by the general permit or imposed by EPA following review by NMFS of NOIs, , and whether those conditions, restrictions or mitigation measures suffice to avoid jeopardy or adverse modification. As a result, the EPA can know whether those discharges are exposing endangered or threatened species or designated critical habitat under NMFS' jurisdiction to pesticide pollutants at concentrations, durations or frequencies that are known or suspected to produce potential individual or cumulative adverse consequences. The EPA can then make corrective or enforcement actions as necessary. This also allows the EPA to know whether reinitiation of formal consultation is required as provided in 50 CFR 402.16.

By identifying all operators who discharge into waters of the United States within the range of endangered or threatened species and designated critical habitat under NMFS' jurisdiction, and by assuring that, with the exception of discharges authorized for 60 days as a result of Declared Pest Emergency Situation, no activities authorized by the general permit would be expected to cause adverse effects to endangered or threatened species under NMFS' jurisdiction, including those situations in which the pest being controlled poses a greater threat to listed species and designated critical habitat than would the exposure to that pesticide pollutant(s) as required by the first element of the RPA, and if all of those operators comply with the terms of the general permit, including any conditions, restrictions or other measures imposed by EPA following review by NMFS of NOIs and those measures are

effective, as would be assured by the second element of the RPA, the EPA can insure that the actions it proposes to authorize by the general permit will not jeopardize the continued existence of any endangered or threatened species under NMFS' jurisdiction or result in the destruction or adverse modification of any designated critical habitat of those species.

Incidental Take Statement

Section 9 of the ESA and Federal regulations pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to: "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct." Harm is further defined by NMFS to include significant habitat modification or degradation that results in death or injury to ESA listed species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of Section 7(b)(4) and Section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

Amount or Extent of Take

This programmatic consultation focuses on whether the EPA has insured that their issuance of the general permit is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. It does not address specific actions that the general permit would authorize. The RPAs are designed to reduce or in most cases prevent the exposure of endangered or threatened species under NMFS' jurisdiction to pesticide pollutants as a result of activities authorized by the general permit. However, it is possible that such exposures may still take place as a result of those activities, and it is possible that these exposures may cause incidental take. In particular, NMFS anticipates that incidental take could occur in those situations in which EPA has determined, with the technical assistance of NMFS, that a discharge of a pesticide that adversely affects listed species is preferable to exposing the species to the pest. As a result, incidental take of endangered or threatened species is possible over the duration of the proposed general permit.

Because of the large scale and broad scope of the proposed action, even the best scientific and commercial data available are not sufficient to enable NMFS to estimate the specific amount of potential incidental take associated with the action. Therefore, NMFS identifies, as a surrogate for the allowable extent of take, the ability of this action to proceed without any adverse incident as defined in Appendix A of the PGP (see Appendix A of this Opinion) to fish of any species, that is attributed to any pesticide pollutant discharged in accordance with the general permit in the range of listed endangered or threatened species under NMFS' jurisdiction. An adverse incident to fish is considered attributable to a pesticide pollutant discharged in accordance with the general permit if that pesticide pollutant is known to have been discharged prior to, and near or upstream of the adverse incident and there is evidence that the pesticide pollutant caused the adverse incident (e.g. the pesticide pollutant is detected in water samples from the area or in tissue samples of affected fish).

Reasonable and Prudent Measures

The measures to avoid or minimize take described below are non-discretionary and must be undertaken by the EPA so that they become a binding condition of any applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The EPA has a continuing duty to regulate the activity covered by this incidental take statement. The protective coverage of section 7(o)(2) may lapse if the EPA: (1) Fails to assume and implement the terms and conditions; or (2) Fails to require any applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the general permit. In order to monitor the impact of incidental take, the EPA must report the progress of the action and its impact on the species to NMFS OPR as specified in the incidental take statement (50 CFR§402.14(i)(3)). The reporting requirements will be established in accordance with 50 CFR 220.45 and 228.5.

To satisfy its obligations pursuant to section 7(a)(2) of the ESA, the EPA must: (1) Monitor the direct, indirect, and cumulative impacts of the activities authorized by the issuance of the general permit; and (2) Evaluate the direct, indirect, or cumulative impacts of the activities authorized by the issuance of the general permit and the consequences of those effects on endangered and threatened species under NMFS' jurisdiction. The purpose of the monitoring is to provide data for the EPA to use to identify necessary modifications to the general permit in order to reduce exposures to endangered and threatened species under NMFS' jurisdiction. NMFS believes all measures described as part of the proposed action, together with use of the Reasonable and Prudent Measures and Terms and Conditions described below, are necessary and appropriate to minimize the likelihood of incidental take of ESA listed species due to implementation of the proposed action.

The EPA shall:

1. Monitor any incidental take or surrogate measure of take that occurs from the action; and
2. Report annually to NMFS OPR on the monitoring results from the previous year.

Terms and Conditions

To be exempt from the prohibitions of section 9 of the ESA, the EPA must comply with the following condition. This condition implements the reasonable and prudent measures described above. This condition is non-discretionary.

The EPA shall include the following instructions requiring reporting of adverse incidents to fish in the general permit:

“NOTICE: Incidents where fish appear injured or killed as a result of discharges into Waters of the United States from pesticide applications as authorized by this permit in the range of endangered or threatened species under the jurisdiction of the National Marine Fisheries Service shall be reported to the National Marine Fisheries Service, Office of Protected Resources at (301) 713.1401 and EPA at (202) 564.0748. The finder should leave the fish alone, make note of any circumstances likely causing the death or injury, note the location and number of fish involved and, if possible, take photographs. Adult fish should not be disturbed unless circumstances arise where an adult fish is obviously injured or killed by pesticide exposure, or some unnatural cause.

The finder may be asked to carry out instructions provided by NMFS OPR to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.”

Conservation Recommendations

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on ESA listed species or critical habitat, to help implement recovery plans, or to develop information.

The following conservation recommendations would provide information for future consultation involving EPA’s approval of State water quality standards:

1. The EPA should work with States with the delegated authority to implement the NPDES program to develop their permits in a manner that is protective of endangered or threatened species or designated critical habitat and to create monitoring programs that evaluate whether these permits are successful in accomplishing that goal.

In order to keep NMFS’ Endangered Species Division informed of actions minimizing or avoiding adverse effects or benefiting ESA listed species or their habitats, the U.S. Environmental Protection Agency should notify the Endangered Species Division of any conservation recommendations they implement in their final action.

Reinitiation Notice

This concludes formal consultation on the U.S. Environmental Protection Agency’s issuance of the Pesticides General Permit. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) New information reveals effects of the agency action that may affect endangered or threatened species under NMFS’ jurisdiction or to designated critical habitat in a manner or to an extent not considered in this Opinion; (2) The agency action is subsequently modified in a manner that causes an effect to the ESA listed species or critical habitat not considered in this Opinion; (3) A new species is listed or critical habitat designated that may be affected by the action; or (4) The amount or extent to take specified in the incidental take statement is exceeded. In instances where the amount or extent of take specified in the incidental take statement is exceeded, the U.S. Environmental Protection Agency must immediately request reinitiation of Section 7 consultation.